IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS
BENTON DIVISION

MARY E. SHEPARD and the ILLINOIS STATE RIFLE ASSOCIATION, Plaintiffs, v. LISA M. MADIGAN, solely in her official capacity as ATTORNEY GENERAL OF ILLINOIS, GOVERNOR PATRICK J. QUINN, solely in his official capacity as Governor of the State of Illinois, TYLER R. EDMONDS, solely in his official capacity as the State's Attorney of Union County, Illinois, and SHERIFF DAVID LIVESAY, solely in his official capacity as Sheriff of Union County, Defendants.	)	No. 3:11-cv-00405-WDS-PMF Honorable Judge William D. Stiehl Magistrate Judge Philip M. Frazier

RESPONSE TO DEFENDANTS'
MOTION TO CITE SUPPLEMENTAL AUTHORITY

Now come Plaintiffs who respond to Defendants' Motion to Cite Supplemental Authority (Doc. No. 55) as follows:

1. As Defendants note, in *Moore v. Madigan*, No. 11-cv-03134 (C.D. Ill. Feb. 3, 2012), the Central District of Illinois granted the State's motion to dismiss a Second Amendment challenge to the same Illinois statutes banning public carriage of firearms at issue in this case. *Moore* does not, however, add anything of substance to Defendants' case.

2. The principal basis for the *Moore* Court's decision is its sweeping conclusion that "individuals do not have a Second Amendment right to bear arms outside of the home." *Moore*, Slip. Op. at 47. This conclusion finds no support in the text of the Second Amendment or in history. *See* Doc. No. 40 at 6-13.

3. In reaching its erroneous conclusion that the Second Amendment is limited to the home, *Moore* asserts that the Supreme Court has not "explicitly recognize[d] a general right to carry firearms in public." Slip. Op. at 28. Supreme Court precedent does, however, speak directly to the meaning of the right to "bear arms" in public subject to regulation, such as involving sensitive places. *See* Doc. No. 40 at 13-15. At any rate, the fact that the Supreme Court has left an issue not wholly decided does not relieve a lower court of the duty to face that issue squarely when properly presented in a case before it. *See id.* at 15-16.

4. As an alternative ground for its holding, *Moore* asserts that Illinois's public carriage ban satisfies intermediate scrutiny. *See* Slip. Op. at 39-43, 47. As an initial matter, Illinois's ban must be evaluated either pursuant to the textual and historical approach employed by the Supreme Court in *District of Columbia v. Heller*, 554 U.S. 570 (2008), or strict scrutiny (both of which it fails), not intermediate scrutiny. *See* Doc. No. 40 at 17-18. Furthermore, *Moore* is incorrect in concluding that the ban can survive even intermediate scrutiny. *See id.* at 18-20.

5. In sum, Plaintiffs have already amply demonstrated in prior briefing to this Court why the conclusions reached by *Moore* are in error.

Respectfully Submitted,

MARY E. SHEPARD and **THE ILLINOIS STATE RIFLE ASSOCIATION**,
Plaintiffs

By: s/ William N. Howard
One of Their Attorneys

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CERTIFICATE OF SERVICE

The undersigned attorney states that he caused a true and correct copy of **Plaintiffs' Response to Defendants' Motion to Cite Supplemental Authority,** to be served upon the parties of record, as shown below, via the Court's CM/ECF system on the **8th** day of **February, 2012**.

By: s/ William N. Howard

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